UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,424	10/04/2001	Chris E. Matichuk	03-509-A	8244

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

EXAMINER
CHOUDHURY, AZIZUL Q

ART UNIT	PAPER NUMBER
2445	

MAIL DATE	DELIVERY MODE
04/20/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/972,424	MATICHUK ET AL.
	Examiner	**Art Unit**	
	AZIZUL CHOUDHURY	2445	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>20 March 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

                 /Patrice Winder/
                 Primary Examiner, Art Unit 2445

Continuation of 11. does NOT place the application in condition for allowance because: they are not deemed fully persuasive.

The first point of contention addressed by the applicant alleges that neither of the prior arts teaches programming over the Web or network by selecting an advertisement. The examiner respectfully disagrees. First, even after amending independent claims 1, 29 and 35, not all of the independent claims teach the contended programming over the Web or network. For instance, independent claims 1 and 35 claim remote programming. Remote programming does not necessarily mean that the Web is entailed. Second, even for the claims that teach the programming through a web/network, such a feature is indeed taught by at least Klosterman. Klosterman teaches data stream being sent to a web browser or a personal computer (pc); see column 4, lines 56-60, Klosterman. To send data to the web browser or personal computer, a web/network is inherently required. In addition, it is further taught how the transmission medium can be optical fiber (fiber optic), cable or telephone (all networks and web mediums); see column 4, lines 45-47, Klosterman. After the show data (the show data can be an advertisement) is sent to the browser/pc, the user is able to click on the advertisement and is able to schedule a recording; see column 2, lines 14-17, Klosterman. Klosterman's design allows the recording device to be a disparate device from the pc; see column 4, lines 56-60, Klosterman. Being a disparate device, the recording device must remotely receive the recording command from the web browser/pc. Furthermore, Killian also teaches a record command being sent to the recorder (equivalent to remote programming over a network); see column 2, lines 22-24, Killian. Hence the claimed limitations are indeed taught by the prior arts of record.

The second point of contention addressed by the applicant concerns the dependent claim feature of one click programming. The applicant contends that such a feature is not taught by either prior art, again the examiner disagrees. Within at least Klosterman it is taught how a user can click on an ad which results in the recording of the corresponding infomercial; see column 2, lines 14-17, Klosterman. Plus, Klosterman teaches within figure 6d a website within a browser and a hyperlink for Microsoft Internet Explorer 3.0™. Furthermore, it is clearly presented by Klosterman how a user can click on an ad which results in the recording of the corresponding infomercial; see column 2, lines 14-17, Klosterman. Such an ad comprises a hyperlink.

The third point of contention addressed by the applicant alleges that neither prior art teach "identification information". In particular, applicant contends that within the prior arts the user is unable to log into the source web service using the identification information. The examiner respectfully disagrees. Killian teaches within column 10, lines 1-17 the use of user profiles. Such user profiles are created through input from the user and there can exist one profile per user; see column 9, lines 10-25, Killian. Killian also teaches how for each television there can be multiple viewers and hence multiple profiles and the user is able to access their account and add, delete, and modify their preferences within their account; see column 9, lines 10-25, Killian. Since multiple users are able to access their respective profiles through the same machine, it is inherent that a logging process of some form exists to enable the user to access the correct profile account. Furthermore Klosterman teaches that a user is authenticated by authorizing payment; see column 2, lines 50-60, Klosterman. This too is a logging process by identification information.

The fourth point of contention addressed by the applicant concerns the use of multiple servers. The applicant contends that neither prior art teach the sharing of information amongst multiple servers. The examiner disagrees. Within at least Klosterman it is taught how the service provider (server) can comprise one or more devices (one or more servers); see column 4, lines 48-60, Klosterman.

The fifth and final point of contention addressed by the applicant concerns the dependent claim feature of keeping a count of hyperlink selection. Applicant contends that such a feature is not taught by either prior art, the examiner disagrees. Killian's design allows for tracking of customers, it is inherent that cookies are applied; column 10, lines 1-17, Killian. Applicant contends that even if cookies are present no teaching is present to teach the monitoring of the number of times a hyperlink is selected; the examiner continues to disagree with this assertion. A cookie is a user tracking file that tracks user activity with respect to a certain address (url/hyperlink) or web site. Thus by definition it possesses the means by which to count hyperlink selection as claimed. Support for such can be found in various sources including wikipedia™. .